FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 28 1949
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1949**

---

# No. 502

---

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,

*Appellant,*

*vs.*

DIVISION OF TAX APPEALS, NEW JERSEY STATE DEPARTMENT OF TAXATION AND FINANCE, AND THE STATE OF NEW JERSEY,

*Appellees*

---

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

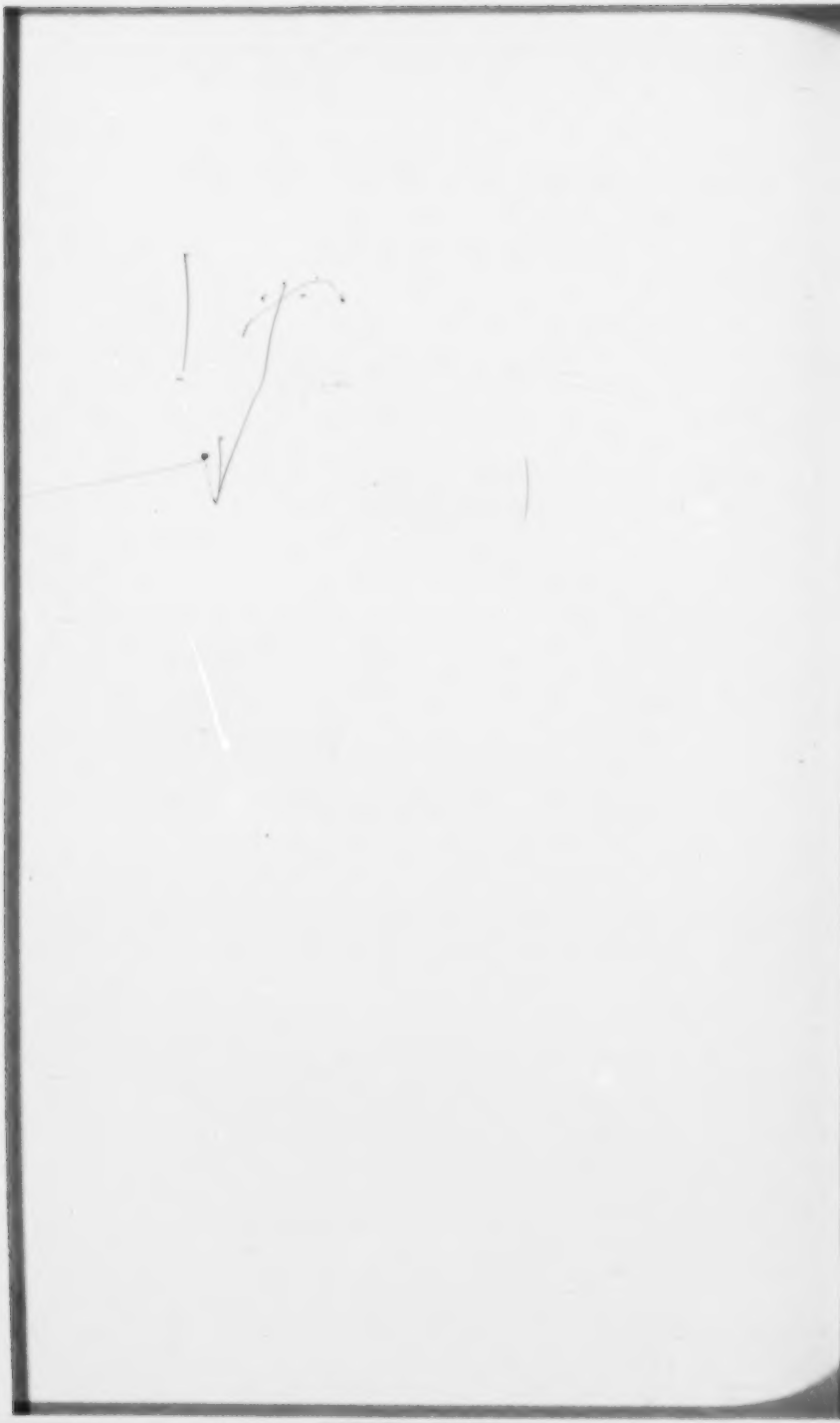
---

## STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

---

THEODORE D. PARSONS,
*Attorney General of New Jersey,*
*Counsel for Appellee,*
*State of New Jersey,*
*State House,*
*Trenton, New Jersey.*

BENJAMIN C. VAN TINE,
*Of Counsel.*



BLEED THROUGH POOR COPY

# INDEX

## Subject Index


| | Page |
|---|---|
| Statement Opposing Jurisdiction | 1 |
| Matters and Grounds Making Against Jurisdiction | 2 |
| A. There are no Federal Questions | 8 |
| B. No Substantial Federal Question is Raised | 11 |
| Motion to Dismiss or Affirm | 15 |


## Table of Cases Cited


| | |
|---|---|
| *Aero Mayflower Transit Co.* v. *Board of R. R. Com.*, 332 U. S. 495, 499 (1947) | 11 |
| *Charleston Fed. Sav. & L. Asso.* v. *Alderson*, 324 U. S. 182 (1945) | 9 |
| *Ferry* v. *County of King*, 141 U. S. 668 (1891) | 10 |
| *French* v. *Taylor*, 199 U. S. 274 (1905) | 11 |
| *Jersey City* v. *State Board of Tax Appeals*, 133 N.J.L. 202 (Sup. 1945) | 3 |
| *Jersey City* v. *Kelly*, 134 N.J.L. 239 (E&A 1946) | 3 |
| *Lehigh Valley R.R. Co.* v. *Martin*, 100 F. 2nd 239 (C.C.A. 3rd 1938) | 11 |
| *New York, Susquehanna & Western R. Co., In re Assessments*, 21 N. J. Misc. 400 (1943) | 4 |
| *Norton, Trustee* v. *State Board of Tax Appeals*, 132 N.J.L. 40 (Sup. 1944) | 4 |
| *Norton, Trustee* v. *State Board of Tax Appeals*, 134 N.J.L. 57, 62 (E.&A. 1946) | 5 |
| *Postal Telegraph Cable Co.* v. *Adams*, 155 U. S. 688 (1894) | 12, 13 |
| *Wall* v. *Chesapeake & Ohio R. Co.*, 256 U. S. 125 (1920) | 9 |
| *Whitfield* v. *Ohio*, 297 U. S. 431 (1936) | 9 |
| *Wilentz* v. *Hendrickson*, 135 N. J. Eq. 244 (E.&A. 1944) | 9 |
| *Wilson* v. *Cook*, 327 U. S. 474 (1946) | 9 |
| *Zucht* v. *King*, 260 U. S. 174 (1922) | 15 |

## Statutes Cited


| | Page |
|---|---|
| 28 U.S.C.A. 1257 (2) | 9 |
| P.L. 1941, ch. 291, sect. 12 | 12 |
| P.L. 1941, ch. 291, sect. 13 | |
| P.L. 1941, ch. 291, sect. 14 | 2 |
| R.S. 54:29A-13 et seq. | 2 |
| P.L. 1941, ch. 291, sect. 74 | 12 |
| P.L. 1888, ch. 208 | 11 |
| R.S. 54:19-1 et seq. | 11 |


## Rules


| | |
|---|---|
| Rule 1:3-2 (c) of the New Jersey Supreme Court | 5 |


BLEED THROUGH POOR COPY

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1949**

---

# No. 502

---

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,

*Appellant,*

*vs.*

DIVISION OF TAX APPEALS, NEW JERSEY STATE DEPARTMENT OF TAXATION AND FINANCE, AND THE STATE OF NEW JERSEY,

*Appellees*

---

## STATEMENT OF APPELLEE, STATE OF NEW JERSEY, MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW ON APPEAL THE JUDGMENT IN QUESTION, INCLUDING APPELLEE'S MOTION TO DISMISS THE APPEAL OR AFFIRM THE JUDGMENT

---

The appellee, State of New Jersey, believing that the matters set forth below will demonstrate the lack of jurisdiction of the Supreme Court and the lack of substance in the questions raised by this appeal, files this, its statement in opposition to appellant's statement as to jurisdiction. Appellee includes herein its motion to dismiss the appeal for lack of jurisdiction, or in the alternative to affirm the judg-

ment of the Supreme Court of New Jersey on the ground that the questions raised by the appellant are so unsubstantial as not to need further argument.

The appellant seeks a review of a judgment of the Supreme Court of New Jersey on direct appeal from that Court. Appellee respectfully asserts that jurisdiction to hear such appeal is lacking under the statute and, furthermore, the grounds stated by the appellant appear on the face of the record to be so unsubstantial as to warrant the Court in summarily disposing of the appeal at this stage of the proceeding.

The matters relied upon by appellee are more particularly stated below:

**1. Matters and Grounds Making Against Jurisdiction**

The appellant seeks to invalidate portions of its franchise excise tax assessments for the tax years 1942 to 1946 inclusive, levied pursuant to the "railroad tax law of 1941" (P. L. 1941, ch. 291; R. S. 54:29A-13 *et seq.*) The "franchise base" upon which the said taxes were levied was computed for each year upon a formula applied to "the next preceding year's net operating income" (P. L. 1941, ch. 291, sect. 14). The appellant complains because, in computing the "next preceding year's net operating income," the state tax commissioner refused to allow: 1) items of back taxes which were not levied against the next preceding year; 2) interest items never heretofore charged to operating income accounts; and 3) a provisional payment of additional 1941 taxes made in 1945 but ultimately determined not to be due and returned to the appellant.

The last item warrants attention. It arose out of litigation concerning the validity of the 1941 tax act. Because the "railroad tax law of 1941", which was designed to provide some measure of tax relief to the railroads in poor earn-

BLEED THROUGH POOR COPY

ing years, did result in lessened railroad taxes, the City of Jersey City, in which the large Hudson River water front railroad terminals are located, immediately challenged the constitutionality of the new act. Certain of the major railroad companies, including the appellant, along with the Attorney General of New Jersey, vigorously defended the constitutionality of the new Act in its entirety. The old Supreme Court held the new Act to be valid prospectively but invalid as to 1941. *Jersey City* v. *State Board of Tax Appeals,* 133 N. J. L. 202, decided August 29, 1945. The Court based its conclusion as to 1941 on the fact that assessments for the year 1941 had already been made in the amount of $18,322,161.33 and that *new assessments for that year* which under the 1941 Act, totalled only $15,0442,931.07, resulted in an unconstitutional gift to the railroads of an amount in excess of $3,000,000 (p. 208). Immediately thereafter most of the railroads, including the appellant, paid the additional amount of 1941 taxes which they considered due by reason of the opinion, the appellant paying an additional $530,902. This was done without any demand from the State and notwithstanding appeals were to be taken. From the said judgment, the City of Jersey City and the railroad companies appealed, the railroad companies, including the appellant, asserting the constitutionality of the new Act in its entirety and the City its complete unconstitutionality. The appeal was argued orally on March 5, 1946, the railroad companies, including the appellant, together with the Attorney General, urging the constitutionality of the "railroad tax law of 1941" in its entirety. It should be emphasized that on March 5, 1946, the appellant urged the complete constitutionality of the act. That date as will be shown is significant. On May 3, 1946, the New Jersey Court of Errors and Appeals modified the judgment of the old Supreme Court. *Jersey City* v. *Kelly,* 134 N. J. L. 239, holding the new act to be constitutional in its entirety. Immedi-

ately thereafter the appellant was repaid the said sum of $530,902, provisionally paid as additional 1941 taxes.

In the meantime, while the above litigation was in progress, the New Jersey Courts were considering the question presented by the instant case. For the years 1942 and 1943, the State Tax Commissioner had permitted the appellant to include certain items of back taxes in its current operating income accounts, solely because the Interstate Commerce Commission had permitted the inclusion of such items. The New York, Susquehanna and Western Railroad Company had also defaulted in payment of taxes for some of the same years as appellant. The record in this case discloses that the latter railroad company was first advised by the Interstate Commerce Commission to place such items of back taxes in a non-operating income account and thereafter permitted to charge the amount to a balance sheet account. (Exhibit S-7, schedules A, B, C and D.) At no time was it even suggested that such amount properly belonged in the operating income accounts. For this reason the Tax Commissioner refused to permit the New York, Susquehanna & Western Railroad Company to include such items of back taxes in the operating income accounts for the year 1942.

Susquehanna appealed to the State Board of Tax Appeals, which, in affirming the assessment, said that, in determining the next preceding year's net operating income, only current items could be allowed. *In re assessment of New York, Susquehanna & Western Railroad Co.*, 21 N. J. Misc. 400 (1943). Susquehanna was granted certiorari by the old Supreme Court. This appellant, believing itself aggrieved by the determination of the State Board of Tax Appeals, sought leave to and was permitted to intervene in the *Susquehanna* case (Ex. S-6). The old Supreme Court reversed the State Board, holding in *Norton, Trustee* v. *State Board of Tax Appeals*, 132 N. J. L. 40, that the deduction should

BLEED THROUGH POOR COPY

have been allowed notwithstanding the amount had not been included in the Interstate Commerce Commission reports as an operating income item. Appeal was taken to the New Jersey Court of Errors and Appeals, which unanimously reversed the judgment of the old Supreme Court, holding in *Norton, Trustee* v. *State Board of Tax Appeals*, 134 N. J. L. 57, 62 that:

> "We hold that 'tax accruals' mean the current taxes for the particular year which have been assessed in conformity with law, e. g. the amount certified by the tax assessor."

This case was decided on Jan. 31, 1946, nearly five weeks before March 3, 1946, the significant date pointed out above, on which the appellant argued and helped to sustain the constitutionality of the railroad tax law of 1941 in its entirety. Thus the argument of appellant, urging the constitutionality of the act in its entirety, was made with the full knowledge of the construction placed upon the pertinent provisions of the Act by New Jersey's court of last resort.

The appellant has not changed its position. Nowhere in the record below can be found a forthright assertion that any portion of the 1941 railroad tax law is invalid. The said appellant simply has sought to have certain portions of the assessments invalidated as not conforming to its own idea of what should constitute "the next preceding year's net operating income".

Rule 1:3-2 (c) of the New Jersey Supreme Court requires a statement of questions involved to be printed on a page by itself in an appellant's brief. The rule provides that such requirement is to be considered in the highest degree mandatory, admitting of no exception and that ordinarily no point will be considered which is not set forth in or necessarily suggested by the statement of questions involved. In com-

pliance with this rule, the appellant included the following in its brief below:

"QUESTIONS INVOLVED"

I

"Does not the action of the State Tax Assessor in arbitrarily increasing the net railway operating income of an interstate railroad as reported to the Interstate Commerce Commission, with the effect of greatly increasing its State taxes, operate as a burden on interstate commerce in violation of the Commerce Clause and involve a denial of due process under the Fourteenth Amendment?"

II

"In view of the disputes as to the construction of the Franchise Tax Act of 1941 is it not proper for the Court to refer to the report of the Joint Legislative Committee which prepared and reported the bill to the Legislature, and the Joint Legislative Committee report of the following year which reported upon the operation of the Act and submitted amendments thereto?"

III

"Where a State statute imposes on an interstate railroad a franchise tax based upon an apportionment to the State of a part of the entire "Net Railway Operating Income" of the interstate railroad system, may the State Tax Assessor legally and constitutionally increase such "Net Railway Operating Income" as reported to and determined by the Interstate Commerce Commission pursuant to the provisions of the Interstate Commerce Act, so as to increase the amount of the State taxes?"

There is no mention in this statement of the 1941 Act being unconstitutional. The appellant does not even suggest that, if the judgment of the Appellate Division under review should be sustained, the Act would be in any wise uncon-

BLEED THROUGH POOR COPY

stitutional. On the contrary the appellant stated in its brief at page 27:

"The effect of the action of the Director that is complained of in each of the tax years under review is to place an unconstitutional burden on the interstate commerce in which appellant is engaged.

"The New Jersey franchise excise tax can only be justified as a tax on the New Jersey earnings of appellant. The only attempt of the statute to determine the earnings of appellant in the State is by taking the Net Railway Operating Income of the System, whether made in two or more States, and taking as a base for taxation by New Jersey that proportion thereof which the mileage of the railroad in New Jersey bears to the total mileage of the railroad in all states. The Supreme Court has held that such a method of determining the earnings of a railroad system in a State is not unreasonable. *Pittsburgh, C. C. & St. L. R. Co. v. Backus,* 154 U. S. 421, 430, 431; 38 L. Ed. 1031, 1038 (1894); *State R. Tax Cases,* 92 U. S. 575, 608, 611; 23 L. Ed. 663, 671, 672 (1876); *Postal Tel. Co. v. Adams,* 155 U. S. 688; 39 L. Ed. 311 (1895); *Atlantic Coast Line R. Co. v. Daughton,* 262 U. S. 413; 67 L. Ed. 1051; 43 S. Ct. 620 (1923); *Norfolk & W. R. Co.* v. *North Carolina,* 297 U. S. 682, 684; 80 L. Ed. 977, 980 (1936); *Western Live Stock v. Bureau of Revenue,* 303 U. S. 250 (Stone, J.); 82 L. Ed. 823 (1938).

"We do not question the constitutionality of the New Jersey Statute as it is written. When, however, the Director, Division of Taxation, so construes the statute as to permit him arbitarily to increase the system Net Railway Operating Income of an interstate railroad carrier to the end that the portion subject to taxation in this State is much greater than the 'franchise base' as specified in the statute, it necessarily follows that New Jersey is assessing a franchise tax not only on the earnings fairly attributable to New Jersey, but actually upon the earnings of the railroad earned in the other States in which the system operates, in this case Penn-

sylvania and New York (See Statement of Miles of Track operated in each state, Ex. P-4, Ap. 344a)."

In addition to the above, the Supreme Court of New Jersey had before it the opinion of the Superior Court, Appellate Division, which makes no mention of any claim of unconstitutionality in the event that the construction, followed ever since the authoritative opinion in *Norton Trustee* v. *State Board, supra,* should be reaffirmed. The New Jersey Supreme Court had every reason to believe, as has this Court from the moving papers in the instant appeal, that the appellant is complaining because the State Tax Commissioner had improperly applied the statute and because the said Commissioner had, in the opinion of the appellant, arbitrarily and capriciously increased the assessments (see assignment of errors). The absence from the opinion of any reference to a federal question concerning the constitutionality of the statute itself was not an oversight. Such question was never argued. The sole question argued was the proper construction of the franchise provision of the act. When the New Jersey Supreme Court answered that question and reaffirmed the rule of *Norton, Trustee* v. *State Board, supra,* it had completed its assignment.

Since the appellant never brought in question the constitutionality of a state statute, and had that question decided adversely to its contention, there is no matter properly before the Supreme Court on appeal. Also since the Supreme Court is bound by the construction placed by the New Jersey Supreme Court upon a state tax statute, the matter sought to be raised by the designation of errors presents frivolous or fictitious issues, which are not the subject of appeal or are of such unsubstantial nature as to warrant summary disposal thereof upon this motion. Also, even if the necessary constitutional question had been properly raised below, the issue would have been so unsub-

BLEED THROUGH POOR COPY

stantial as to warrant summary disposal because the "railroad tax law of 1941" is in substitution of a higher straight property tax, which time after time had been held wholly constitutional. (History of litigation set out in *Wilentz* v. *Hendrickson*, 135 N. J. Eq. 244, 258 (E. & A. 1944).) To support these various contentions, the following is respectfully submitted:

### A. There Are No Federal Questions

The Supreme Court is without jurisdiction of an appeal under 28 U. S. C. A. 1257 (2) unless there was "drawn in question" before the Supreme Court of New Jersey the validity of the state statute under review. In *Wilson* v. *Cook*, 327 U. S. 474, 480 (1946), the Court said that the purpose of this requirement is to make certain that no judgment of a state court will be reviewed on appeal by the Supreme Court unless the highest Court of the State has first been apprised that a state statute is being assailed as invalid on federal grounds, citing *Charleston Fed. Sav. & L. Asso.* v. *Alderson*, 324 U. S. 182 (1945). The jurisdictional requirement is only satisfied if the record shows that the validity of the statute has been either presented for decision to the highest court of the state, *Wall* v. *Chesapeake & Ohio R. Co.*, 256 U. S. 125 (1920) or has been decided by that Court. *Whitfield* v. *Ohio*, 297 U. S. 431 (1936).

The record in the instant case does not disclose that appellant did at any time assert that the construction placed by the New Jersey Courts on the franchise provisions of the 1941 tax law caused such provision to violate the Constitution of the United States. On the contrary since the beginning of this litigation, the appellant has complained only of the "arbitrary and capricious" action of the state taxing authorities and has alleged that the said action or conduct violated the constitutional rights of the appellant.

Furthermore, even in the present assignment of errors, the appellant does not explicitly assert that if the legislature intended to permit only the inclusion of current items for the purpose of calculating the next preceding year's net operating income, this would make the 1941 franchise tax provision unconstitutional. This in itself would make the appeal defective for, as it was held in *Charleston Fed. Sav. & L. Asso.* v. *Alderson, supra,* even where the federal questions have been properly raised below, an appeal may be dismissed where the appellant fails to attack a statute explicitly in its assignment of errors.

It is obvious, from the course charted by the appellant below and from the moving papers in this case, that the appellant is attacking specific assessments and has no wish that any portion of the 1941 tax law should be declared to be unconstitutional. In *Wilson* v. *Cook, supra* (p. 482), the Court restated the well established rule that in order to support an appeal, it is necessary that the validity of the statute itself and not an assessment under the act be presented, citing many cases to support the rule.

In *Ferry* v. *County of King,* 141 U. S. 668 (Wash. 1891), it was held that the Supreme Court will not consider a case where a state law is admitted to be valid and the only question is whether it has been correctly construed. The quotation from the appellant's brief below (p. 28) shows clearly that the instant case is squarely within rule of the *Ferry* case.

The present appeal must fall not only because the validity of the statute was not properly drawn in question, but because the matters sought to be raised on this appeal are frivolous or fictitious. The moving papers disclose that appellant still urges that the New Jersey tax statute was improperly construed. The appellant seeks by this appeal to establish a construction more favorable to itself. But there is no jurisdiction in the Supreme Court to undertake

BLEED THROUGH POOR COPY

such an inquiry for as was said in *Aero Mayflower Transit Co.* v. *Board of R. R. Com.*, 332 U. S. 495, 499 (1947):

> "We put aside at the start appellant's suggestion that the Supreme Court of Montana has misconstrued the state statutes and therefore that we should consider them, for purposes of our limited function, according to appellant's view of their literal import. The rule is too well settled to permit of question that this Court not only accepts but is bound by the construction given to state statutes by state courts."

Since the question of the constitutionality of the "railroad tax law of 1941" was never submitted to the New Jersey Courts but, on the contrary, the constitutionality of such law as written was repeatedly urged below and, since any other questions sought to be raised by the instant appeal are frivolous or fictitious, there is no jurisdiction in the Supreme Court to hear such appeal. *French* v. *Taylor*, 199 U. S. 274 (1905).

But even if the appellant had explicity drawn in question the validity of the statutes, the question would have been so unsubstantial as to require the Supreme Court to dispose of the matter summarily by dismissing the appeal or affirming the judgment, because

### B. No Substantial Federal Question Is Raised

Prior to 1941, New Jersey levied a straight property tax (P. L. 1888, ch. 208, as amended; R. S. 54:19-1 *et seq.*) The 1888 law had been the source of much litigation. The said law was repeatedly held to be constitutional. One complaint had been that earnings were not taken into consideration in determining valuation. The Circuit Court of Appeals commented upon this lack in *Lehigh Valley R. R. Co., et al.* v. *Martin*, 100 Fed. 2nd 139 (C. C. A. 3rd 1938), (all the railroads). The New Jersey Legislature sought to remedy

this lack by the "railroad tax law of 1941". As was said by the Court in *Norton, Trustee* v. *State Board, supra,*

> "The new system was devised to provide some measure of relief in poor earning years, while providing for a greater return to the state in times of high earnings."

That the new railroad tax law was in substitution of the old law is shown by P. L. 1941, ch. 291, sect. 74 which after providing for abatement of taxes levied under the old law said:

> "This act shall be construed as a revision of chapters nineteen through twenty-nine inclusive of Title 54 of the Revised Statutes * * *".

Also by sect. 12 it is provided:

> "Taxes assessed pursuant to this act shall be in lieu of all other State or local taxation of or measured by property taxable hereunder, other than assessments for benefits."

The total tax levied under the new act is less than that levied under the old tax act. For the year 1941, the reduction for the appellant alone was $530,902. For the period 1941 to 1947 inclusive, the amount required to be paid by appellant under the 1941 Act was substantially lower, even on the basis of the present construction of the 1941 act, than under the 1888 act. Although such period included the war years when earnings were very high, the State for the whole period collected $2,915,000 less. For the years 1946 and 1947 the reductions amounted to approximately $1,210,600 and $1,615,200 respectively. (Application of local and average rate to valuation shown on Ex. S-14.)

Since the combined tax under the 1941 act was in substitution of and was less than the straight property tax would have been, this case comes under the rule of *Postal Tele-*

BLEED THROUGH POOR COPY

*graph Cable Co.* v. *Adams*, 155 U. S. 688 (1894), wherein the Court said (p. 700):

> "We are of opinion that it was within the power of the state to levy a charge upon this company in the form of a franchise tax, but arrived at with reference to the value of its property within the state and in lieu of all other taxes, and that the exercise of that power by this statute, as expounded by the highest judicial tribunal of the state in the language we have quoted, did not amount to a regulation of interstate commerce or put an unconstitutional restraint thereon."

As has been pointed out, appellant not only has admitted the constitutionality of the 1941 act as written but, in extended litigation, vigorously asserted the constitutionality of the said act in its entirety. It is difficult to comprehend how, if a franchise tax, based upon the next preceding year's net operating income, is admitted to be constitutional, it may be claimed that such tax could become unconstitutional because operating income charges are confined to those of the year under consideration and charges never heretofore placed in the operating income accounts are excluded therefrom. We can find no case which supports a finding of unconstitutionality based upon so flimsy a premise. Also the record shows that the Pennsylvania Railroad Co., the Central Railroad Company of N. J., and the New York Central, all of whom were parties to the 1933 to 1940 tax litigation, charged the 1933 to 1940 taxes as they were levied. Of this the appellant said at page 15 of its reply brief below:

> "To begin with, the Attorney General refers to the fact (p. 4) that appellant together with the New York, Susquehanna & Western Railroad Company did not follow the Pennsylvania Railroad Company, the Central Railroad Company of New Jersey and the New York Central Railroad Company in accruing the disputed

taxes in the years for which they were originally assessed. The answer to this is that the Pennsylvania Railroad having paid the taxes in full had no choice but to accrue them currently, and that the Central Railroad Company of New Jersey and the New York Central Railroad did not follow the sound principles of accrual accounting laid down in the authorities referred to in the next preceding point in this brief. The fact that those railroads thereby forfeited an advantage now enjoyed by appellant does not in any way affect the soundness of appellant's position."

We respectfuliy submit that the constitutionality of state tax laws cannot be made to rest upon the acceptance by a State of the bookkeeping practices of a taxpayer.

The railroad tax law of 1941 as construed has substantially benefited the railroads generally in New Jersey. They are not here attacking the constitutionality of that law. On the contrary in concert with this appellant, they were successful in sustaining its validity. Nothing shown in the moving papers on this appeal would even raise a suspicion that this Court would at this time interfere with the operation of that act as construed.

We have shown above the frivolous nature of the appeal as a reason for the Supreme Court not accepting jurisdiction. We beg leave to repeat that argument including the very appropriate observation of the Court in *Aero* v. *Mayflower Transit* v. *Board of R. R. Com., supra,* to the effect that:

> "The rule is too well settled to permit of question that this Court not only accepts but is bound by the construction given a state statute by state courts."

It would appear therefore that, even if the appellant had properly raised the invalidity of the 1941 railroad tax law below, the questions presented by the appeal would be of such an unsubstantial nature as to warrant the Supreme

BLEED THROUGH POOR COPY

Court summarily dismissing the appeal or affirming the judgment of the New Jersey Supreme Court. *Zucht* v. *King*, 260 U. S. 174, (1922).

**2. Motion to Dismiss or Affirm**

Appellee respectfully submits this statement showing there is no Federal question involved and consequently a lack of jurisdiction; and further that the questions upon which the decision of this case depends are so unsubstantial as not to need further argument.

WHEREFORE, appellee respectfully moves the Court to dismiss this appeal, or in the alternative to affirm the judgment of the Supreme Court of New Jersey.

Respectfully submitted,

THEODORE D. PARSONS,
*Attorney General of New Jersey,*
*Counsel for Appellee,*
*State of New Jersey,*
*State House,*
*Trenton, New Jersey.*

BENJAMIN C. VAN TINE,
*Of Counsel.*